

**Special House Legislative Commission to Study the Effects and Procedures for the  
Reorganization of the Rhode Island Coastal Resources Management Council**

Wednesday, November 10, 2021

Time 2:00 PM

Meeting Notes

(Not intended as official meeting minutes)

**Commission Members in Attendance:** Representative Deborah Ruggiero, Representative Arthur Handy, Representative Michael Chippendale, Representative Lauren Carson, Topher Hamblett, Jamie Hainsworth, Stephen Land, David Baud, Richard Hittinger, Michael McGiveney, and Sven Risom, William DePasquale

**I. Call meeting to Order:**

Chairwomen Deborah Ruggiero called the meeting to order at 2:03 PM

**II. Opening Comments:**

Chairwoman Ruggiero welcomed the members to the Jamestown Town Hall and thanked Town Administrator Jaimie Hainsworth.

**III. Presentation by Jeffrey Willis, Executive Director, and James Boyd, Deputy Director, of the Coastal Resources Management Council (CRMC) on the Special Area Management Plan including developing policies and standards for the siting of submerged cables within state waters and aquaculture projects within Narragansett Bay and the Sakonnet River**

The PowerPoint document is included the report. Highlights of the presentation include:

- The first application for an aquaculture project was approved in 1988 for Pt. Judith Pond. It was a two year process with fourteen public hearings. CRMC is the lead agency for aquaculture permitting by statute, General Laws 20-10-3.
- Aquaculture has grown over time in terms of the number of farms and the number of acres leased. The first working group on aquaculture met from 2000-2 to try to reduce conflicts with traditional fisheries, the second working group focused on leasing in Salt ponds and in 2021 the Narragansett Bay SAMP working group renewed interest in salt ponds.
- CRMC has used SAMP process for 50 years. Beginning with Providence Harbor SAMP in 1981. The current Narragansett Bay SAMP was started because of the need for cables corridors for offshore wind projects. They issued advance notice of proposed rulemaking earlier this spring and are still working on those proposals
- In the process CRMC heard much discussion about aquaculture and in 2019, started the aquaculture element of the Bay SAMP.

- Since March 2021, there have been 24 meetings, the notification process will be proposed on December 7. Last month CRMC went to Tiverton and answered questions for two hours. CRMC will continue to do this with other stakeholders.
  - Heard from constituents about lack of notification, and implemented a listserv in July
  - Working on floating gear guidelines
  - Starting on additional notification requirements
  - Working on application forms and procedures
  - Aquaculture constraints map is being developed and will be integrated into the regulatory program (the red book)

Ben Goetsch, CRMC Aquaculture Coordinator, continued the presentation.

- The aquaculture constraints map identifies hard constraints which are locations where aquaculture leases are not suitable according to federal and state regulations.
- The Shellfast-RI siting tool was developed over the last year and a half. It is a GIS based siting tool to compliment the Bay SAMP constraints map. NOAA, RI Sea Grant, RWU law and URI Environmental Data Center all contributed.
- Shellfast-RI is an interactive platform designed to assist applicants by generating more accurate data and maps concerning site selection.
- CRMC is currently developing new application materials and procedures, new formats and guidelines to include in the application packages. Also, CRMC is going to incorporate best management practices from the East Coast Shellfish Growers Association developed with NOAA and USDA.
- Standardized maps and charts for public notices.

Application review process:

- There is a preliminary determination and initial review with the town, Coast Guard, DEM, Army Corps of Engineers, fishing industry and other non-government organizations before the full application is submitted.
- When the application is submitted there is a 30 day public notice. CRMC is required statutorily to get recommendation of director of DEM and the marine fisheries council, including the shellfisheries advisory council subcommittee.
- The council makes the final decision if an aquaculture application is approved.

Jeffrey Willis continued the presentation.

- Lessons CRMC has learned from the working groups and scoping meeting:
  - Better outreach, Listserv developed, more than 200 contacts, and many of the contacts are groups that represent multiple people.
  - Did outreach with other jurisdictions including Maine, and now CRMC is working on a draft application process, expanding the community notification by the applicant and holding community scoping sessions.

**Questions and Discussion by Commission Members:**

- Representative Ruggiero asked what the criteria is for the decision making when CRMC approves exclusive use by a commercial user on what was open public use type one water. Jeffrey Willis answered that in the red book there are Category B requirements and they are demonstrated needs that the applicant has to show what the purpose and the need of the project would be. It can occur in any of the water types, type one is conservation areas, and type two is a low-intensity use area. In the 70's, bottom plant cages were the predominant method and it did not impact use very much. Now there are cages at the bottom, middle and top of the water column. Discussions have to be had as to how these new cages affect use.
- Representative Ruggiero asked what constitutes a reasonable objection. Jeffrey Willis responded that any objection would be reasonable, we want to hear why.
- Representative Carson followed-up by asking if CRMC provides a structure for the organizations that are required to review these applications, such as a list of attributes or considerations of the application to consider so that CRMC receives consistent information back. Jeffrey Willis responded that they all get the entire application and all the information requirements. Each agency has their own regulatory authority on the application. Army Corps of Engineers looks at the structural issues, DEM is looking at water quality, fisheries and other natural resource impacts, and historic preservation is mostly concerned with shipwrecks and other types of archeological issues and cultural resources in Narragansett Bay. Each agency notifies CRMC as to how the activity effects their jurisdictions.
- Sven Risom asked if the twelve denials on page sixteen of the presentation included all the aquaculture denials. Ben Goetsch replied that it is not a complete list of the denials, just the most notable events from the last ten years. Sven Risom asked how many aquaculture applications were denied. Ben Goetsch answered that he did not have that information and will have to go through files, many of the early applications date back to the 1970's. Some applications have been denied, abandoned, revoked or surrendered.
- Representative Ruggiero asked how CRMC designates aquaculture areas in a community and if there is a saturation point. Ben Goetsch responded that question is being studied as part of the Bay SAMP and CRMC addressed this in the salt ponds during the 2007-9 working group with the 5% rule. The 5% rule was originally developed based on ecological capacity but now it is being interpreted for social use capacity. Current research has proven that the actual ecological capacity of the pond is much higher than 5% probably closer to 40% but everyone recognizes the 5% rule stands for a reason. CRMC does recognize that particular bodies of water may or should be restricted in leasing based on the cumulative impact. This is addressed in the application in the Cat B requirements. The applicant has to address the cumulative impact of the operation in light of existing aquaculture in the area.
- Representative Ruggiero asked if CRMC charges a fee per acre to the business. Ben Goetsch replied that this is the one instance where CRMC charges a lease fee. Many other jurisdictions, about a third of the other states will charge fees for docks or other uses and the money that is generated is put in funds to further public trust interests. In RI

the funds go to the general fund. Representative Ruggiero asked if a portion of the lease fee goes to the host community. Ben Goetsch replied no.

- Jamie Hainsworth asked what type of objections have been sustained, meaning that CRMC has denied a lease. Jeffrey Willis responded recently an applicant wanted to expand in Potter pond and the objections that were raised were sustained and the subcommittee denied the application. Most of the objections were due to use conflicts.
- Jamie Hainsworth asked if CRMC considers landside effects when considering an application. Jeffrey Willis responded that they only consider what happens in the water. Jaimie Hainsworth asked if CRMC takes in consideration that cities and towns have zoning regulations that would prevent a person from offloading in certain areas, Jeffrey Willis responded that if they are allowed to do it in a town and be consistent with zoning they will be allowed to do it but most operations use other facilities to unload. CRMC does not allow commercial product to be unloaded a residential dock.
- Richard Hittinger stated that it is always better to hear objections as early in the process as possible so no one invests too much into a potential project prior to hearing the objections and coming to a resolution. He asked if CRMC has considered an ombudsmen who would reach out and try to determine if there are fishery conflicts or other recreational use conflicts. Jeffrey Willis answered that the working group will further explore it. With an enhanced preliminary determination process CRMC would have the aquaculturist submit plans and then hold the community outreach meetings to get the input up front before it comes to a formal CRMC review process. Maybe the kinks will be worked out in advance, but there will still be steps for the public to weigh in in the formal review process.
- William DePasquale asked what is the tipping point in type 1 and 2 waters and is this use consistent with the Red Book. Ben Goetsch replied that part of the justification for allowing aquaculture in these waters is aquaculture has net positive environmental effects. Currently the red book does not allow the applicant exclusive use, practically speaking if there is gear at the surface, it does limit use. The application must demonstrate how access and other uses will be effected by the operation. Floating structures are not allowed in Type 1 and 2 waters in the red book but aquaculture is specifically excluded from that restriction.
- Bill DePasquale asked how riparian access to and from a channel is addressed when looking at a category B permit. Ben Goetsch replied that navigation needs to be considered along with the effect on the fisheries and the environment according to statute. CRMC relies on local input from harbor masters and local officials and consults with the Coast Guard and Army Corps of Engineers.
- Topher Hamlett asked if CRMC expects growth in non-shellfish aquaculture and what are the ecological impacts. Ben Goetsch stated that 98% of aquaculture is oysters and the other 2% is other shellfish and a little bit of kelp. The ecological benefits are evolving as the science evolves. The filtering capacity is important and the cultivation of commercial shellfish has an added benefit, unlike reefs where the shellfish die, the excess nutrients are removed with the oysters when they are harvested. And there is evidence that the feeding and the bio deposition of the oysters' waste products can have a positive effect on

sediment and nitrification. Kelp is a developing market and has been shown to remediate excess nutrients and be a fairly significant carbon sink. It also can combat ocean acidification and creates halo zones of water with better quality. Oysters have been shown to have an almost equal habitat value as eelgrass. Aquaculture cannot be sited on a known eelgrass habitat. CRMC will survey the bottom and DEM will alert us to any historical eelgrass in the area of a proposed aquaculture project.

- Stephen Land asked how enforcement works after a lease is granted and if CRMC works with municipalities on enforcement. He has run into problems with enforcement when cages and materials break free. Ben Goetsch answered that he is the primary person for inspecting and enforcement for aquaculture. Any lost gear is required to be recovered by the aquaculturist within a certain amount of time. He works with towns to address these issues. CRMC has a MOU with the town of Charlestown to address some of these issues. It is a challenge for one person, however working with other staff at CRMC he is able to get on boats and get eyes on projects and maintain regular communication with many of the growers to address issues before they become a problem. All aquaculture is required to have a performance bond associated with the assent, and if the assent is revoked, abandoned or in disrepair CRMC has the authority to take care of the area and return it to the public and can use the performance bond to pay for it. Minimum bond is \$5,000 and ranges up to about \$40,000.
- Michael McGiveney stated the SAMP process has worked well for the fisherman as far as identifying areas not suitable for commercial aquaculture. He asked how CRMC is going to address the changing gear type moving forward and is there a subcommittee addressing gear? Ben Goetsch replied that CRMC is seeking to develop gear guidelines and regulatory measures that can address the changing technology. Traditionally the larger oyster cages have large floats to achieve that, new designs are almost flush with water in normal position and only a few inches about the water in the drying position. The investment in gear is substantial, but newer gear offers increased efficiencies. A couple of growers have modified their permits to include this gear right here in Jamestown. More aquaculturists will look at this and adopt it over their existing gear because it provided increased efficiency. Mr. McGiveney stated that he is happy that the Narragansett Bay SAMP is looking into setting aside areas that will be protected from the potential for leasing. The fisherman have put a lot of effort into protect these areas and are very supportive of the hard constraints being put in place. Ben Goetsch stated that one thing that CRMC has incorporated into this plan is to prohibit aquaculture in conditional waters and that will remove many potential conflicts between traditional fisheries and aquaculture.

**IV. Comments on the notification process and overall procedures of CRMC by: the Jamestown Harbor Commission, the Portsmouth Harbor Commission, and the Tiverton Town Administrator**

- **Chief Mello from Jamestown Harbor Commission** could not attend the hearing but provided written testimony that Representative Ruggiero read into the record and is included in this report.
- **Tom Grieb, Portsmouth Harbor Commission**, suggested eight process improvements:
  - Proactive abutter, impacted groups, and property owner notifications by applicant. Be sure lease expansions do this too. With penalty of not getting application if all abutters have not been notified.
  - Include an aquaculture section in Harbor Management Plans. This obtains Municipality input and could influence the farm numbers, amount of shoreline used, position and size of sites in a Municipality's area (similar to mooring fields). This gives the right ratio and balance between shell fishing and non-aquaculture fishing, regular fishing and recreation uses.
  - Selective testing of sites for pollution before approval. (Example - Navy Base Tank Farm runoff areas where PFAS and heavy metal are washing into water and it should be tested before it becomes an aquaculture area.
  - Non-transferrable leases (similar to moorings) would prevent site stockpiling/flipping.
  - Enforce that all leases are productively used - no providing large leases to "grow into." In Tiverton an aquaculturist was allowed to lease a large area but only used a small area because they were just starting and learning the ropes.
  - Limit aquaculture to only bottom cages in any navigable waters.
  - Limit Bay/River waters to only shellfish aquaculture.
  - Require cages to be permanently tagged with identification for clean up
- **Chris Cotta, Tiverton Town administrator** stated that before the SAMP process started Tiverton had a number of applications and CRMC worked with our harbor commission and had several public hearings to vet issues. The pond area should be excluded because of fishing and recreational uses. There were two on the river, one was in the middle of a mooring field that no one knew about, and now there are a few more applications. Most applications are on the river where many of the homeowners are part-time and the area is very rural. There should be notifications to the abutters within 1,000ft of the projects by certified mail. Because Tiverton is so rural the activity should not come off the beach head. He believes it is against zoning. Anyone who is doing commercial fishing should be using commercial docks. Representative Handy asked if people using non-commercial areas for landing the gear? There was one proposal to do that but it has not have been approved yet.

Representative Ruggiero shared that the study commission received a letter signed by over 100 constituents which is included in this report.

**Representative Ruggiero announced the next meeting date on November 18 at 1:00 at URI's Bay Campus.**

**The meeting adjourned at 3:16 PM**